

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Justin Huang	Team: Squad #4	CCRB Case #: 202101824	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/17/2021 11:24 PM	Location of Incident: Near § 87(2)(b)	Precinct: 44	18 Mo. SOL 9/17/2022	EO SOL 9/17/2022	
Date/Time CV Reported Sun, 03/21/2021 1:24 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 03/21/2021 1:24 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Matthew Miret	07813	961955	PSA 7
2. PO John Migliaccio	25698	964169	PSA 7
3. SGT Steven Counihan	04669	952620	OPS UNIT
4. PO Mike Suarez	05841	955540	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A. PO Mike Suarez	Abuse: Police Officer Mike Suarez stopped the vehicle in which § 87(2)(b) was an occupant.	
B. PO Matthew Miret	Abuse: Police Officer Matthew Miret stopped the vehicle in which § 87(2)(b) was an occupant.	
C. PO John Migliaccio	Abuse: Police Officer John Migliaccio stopped the vehicle in which § 87(2)(b) was an occupant.	
D. SGT Steven Counihan	Abuse: Sergeant Steven Counihan stopped the vehicle in which § 87(2)(b) was an occupant.	
E. PO Matthew Miret	Abuse: Police Officer Matthew Miret questioned § 87(2)(b)	
F. PO Matthew Miret	Abuse: Police Officer Matthew Miret frisked § 87(2)(b)	
G. SGT Steven Counihan	Abuse: Sergeant Steven Counihan searched the vehicle in which § 87(2)(b) was an occupant.	
H. PO John Migliaccio	Abuse: Police Officer John Migliaccio searched the vehicle in which § 87(2)(b) was an occupant.	
I. PO Matthew Miret	Abuse: Police Officer Matthew Miret searched the vehicle in which § 87(2)(b) was an occupant.	
J. PO Mike Suarez	Discourtesy: Police Officer Mike Suarez was discourteous to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		

## Case Summary

On March 21<sup>st</sup>, 2022, § 87(2)(b) filed this complaint with the CCRB over the phone.

On March 17<sup>th</sup>, 2021, at approximately 11:24PM, § 87(2)(b) parked in front of 280 East 161st Street in the Bronx and waited to pick up a friend. Police Officers Mike Suarez, Matthew Miret, John Migliaccio and Sergeant Steven Counihan, from Police Service Area 7, stopped and approached § 87(2)(b) (**Allegations A-D: Abuse of Authority**, § 87(2)(g) PO Miret questioned § 87(2)(b) about marijuana (**Allegation E: Abuse of Authority**, § 87(2)(g) and then frisked him (**Allegation F: Abuse of Authority, exonerated**). Sgt. Counihan, PO Migliaccio and PO Miret searched § 87(2)(b)'s vehicle (**Allegations G-I: Abuse of Authority**, § 87(2)(g) PO Suarez asked § 87(2)(b) if he had crack cocaine in his car (**Allegation J: Discourtesy**, § 87(2)(g), § 87(2)(g), § 87(4-b)

There were no arrests made or summons issued as a result of this incident.

The CCRB received body worn camera (BWC) footage regarding the incident (**BR01-04**).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Mike Suarez stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Police Officer Matthew Miret stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (C) Abuse of Authority: Police Officer John Migliaccio stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (D) Abuse of Authority: Sergeant Steven Counihan stopped the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) (**BR05**) stated that he stopped in front of 280 East 161st Street to pick up a friend. § 87(2)(b) was alone and drove a silver Audi sedan with North Carolina license plate number RAR-8032. The car had tinted windows, but § 87(2)(b) did not know the level of tint on his windows or if the tints were illegal. After approximately 3-5 minutes, two black Toyota sedans drove up to the left of his car, parking ahead and behind § 87(2)(b)'s vehicle, and boxing him in. § 87(2)(b) then noticed a flashlight shine in through his window and the sound of knocking and he rolled his window down. § 87(2)(b) asked PO Miret why he was being approached by the police. PO Miret replied that § 87(2)(b)'s window tints were too dark and that he was parked in a bus lane.

PO Miret, PO Migliaccio, PO Suarez and Sgt. Counihan (**BR08-11**) all stated that a vehicle stop was conducted because § 87(2)(b)'s vehicle had excessive window tints. In addition, PO Suarez said that § 87(2)(b) was parked in front of a bus stop. PO Miret, PO Migliaccio and Sgt. Counihan did not remember if § 87(2)(b) was parked in a bus lane.

BWC footage from PO Migliaccio (**BR01**) shows that at 00:53 minutes, PO Migliaccio exits his vehicle and walks back to a silver sedan with § 87(2)(b) sitting in the driver's seat. PO Miret approaches driver's seat and asks § 87(2)(b) to roll down the window. PO Suarez and Sgt. Counihan are seen standing on the opposite side of the car and shine their flashlights into the vehicle. § 87(2)(b)'s vehicle is located directly next to the bus stop, but it is not known how long § 87(2)(b)'s vehicle was at the bus stop before officers pulled up next to him. Throughout the

incident, none of the officers measured the window tints on § 87(2)(b)'s vehicle.

New York Vehicle Traffic Law Section 375.12(b) (BR06) states that “no person shall operate any motor vehicle upon any public highway, road or street the side wings or side windows of which on either side forward of or adjacent to the operator’s seat are composed of, covered by or treated with any material which has a light transmittance of less than seventy percent.”

§ 87(2)(b), § 87(2)(g)

**Allegation (E) Discourtesy: Police Officer Matthew Miret questioned § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Matthew Miret frisked § 87(2)(b)**

**Allegation (G) Abuse of Authority: Sergeant Steven Counihan searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (H) Abuse of Authority: Police Officer John Migliaccio searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (I) Abuse of Authority: Police Officer Matthew Miret searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) (BR05) stated that PO Miret asked him if he had any marijuana in the car due to the smell of marijuana coming from the vehicle, and § 87(2)(b) stated that he did not smoke marijuana. § 87(2)(b) explained in his interview that the car may have smelled like marijuana since he drove a friend home earlier that day who had smoked marijuana. PO Miret ordered § 87(2)(b) to step out of the vehicle and § 87(2)(b) complied. PO Miret told § 87(2)(b) to turn around and place his hands on top of his car. PO Miret then frisked § 87(2)(b)'s waistband, legs, and back. Afterwards, PO Miret told him to stand at the back of the vehicle. Two officers, he did not recall which ones, searched § 87(2)(b)'s vehicle, including the front and back seats, the front console, and two duffel bags in the backseat. The two officers then searched the trunk and pulled out a katana (sword) from a black case. § 87(2)(b) explained to them that the sword was a prop for a painting. The officers then returned the sword to the trunk.

BWC footage from PO Migliaccio (BR01) shows that at 01:16, PO Miret asks § 87(2)(b) if he has anything in the vehicle that he should not have. § 87(2)(b) says no and that he was there to pick up a friend. PO Miret tells § 87(2)(b) that he could smell marijuana, and § 87(2)(b) responds that there is no marijuana in the car. At 01:33, PO Miret asks § 87(2)(b) to step out of the vehicle, and § 87(2)(b) puts on a mask and steps out. PO Miret tells § 87(2)(b) to put his hands on the roof of the car and asks if he has anything on him. At 02:16, PO Miret frisks § 87(2)(b) sweatshirt, waistband, and legs. At 02:47, PO Miret and PO Migliaccio search the backseat and some duffel bags in the backseat. At 03:43, PO Counihan and PO Miret open and search the trunk of the car. BWC footage from PO Miret (BR02) shows that at 03:44, PO Miret searches the driver's seat and the trunk.

PO Miret and PO Migliaccio (BR10-11) both stated in their interviews that they stood by the driver’s side of the vehicle during the initial vehicle stop and had smelled the odor of marijuana coming from § 87(2)(b)'s vehicle when he rolled down the windows. Sgt. Counihan (BR08) also stated that he detected the odor of marijuana while standing at the passenger side of the vehicle.

NYPD Patrol Guide procedure 212-11 (BR20) states that officers may ask accusatory or pointed

questions upon founded suspicion that criminal activity is afoot. Founded suspicion is defined as an indication based on observable conduct or reliable hearsay.

People v. Chesnut, 43A.D. 2d 260 (BR07) states that “the smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants.”

§ 87(2)(b), § 87(2)(g)

**Allegation (J) Discourtesy: Police Officer MIKE SUAREZ was discourteous to** § 87(2)(b) -

§ 87(2)(b) (BR05) stated that during the vehicle stop, PO Miret asked him if he had any crack cocaine in the car and § 87(2)(b) said no.

Analysis of BWC footage from PO Suarez (BR03) showed that PO Suarez asked § 87(2)(b) regarding crack cocaine, not PO Miret. At 03:18, while § 87(2)(b) is standing in the back of his vehicle alongside PO Suarez, PO Suarez asks if § 87(2)(b) has any crack cocaine in the car and § 87(2)(b) said no. PO Suarez responds, “Cool...you seem like a good guy.”

PO Suarez (BR09) stated that he asked § 87(2)(b) whether he had crack cocaine in the car as a joke in order to calm § 87(2)(b) down. PO Suarez did not at any point suspect § 87(2)(b) of having crack cocaine on his person or in his vehicle.

NYPD Patrol Guide procedure 212-11 (BR20) states that officers may ask accusatory or pointed questions upon founded suspicion that criminal activity is afoot. Founded suspicion is defined as an indication based on observable conduct or reliable hearsay.

NYPD Patrol Guide procedure 203-09 (BR21) states that officers should interact with the public in a courteous and professional manner.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR13**).
- PO Miret has been a member of service for five years and has been a subject in eight CCRB complaints and twenty-seven allegations, of which three were substantiated (**BR14**):
  - Case #202001754 involved a substantiated allegation of a strip search against PO Miret. The Board recommended charges and the NYPD has not yet imposed discipline.
  - Case #202006197 involved substantiated allegations of pepper spray and threat of force. The Board recommended charges and command discipline B, respectively, and the NYPD has not yet imposed discipline. § 87(2)(g)
- PO Migliaccio has been a member of service for four years and has been a subject in eleven CCRB complaints and thirty-six allegations, of which nine were substantiated (**BR15**):
  - Case #202001754 involved two substantiated allegations of discourtesies. The Board recommended command discipline A and the NYPD has not yet imposed discipline.
  - Case #202003429 involved a substantiated allegation of a refusal to provide shield number. The Board recommended command discipline A and the NYPD has not yet imposed discipline.
  - Case #202004301 involved a substantiated allegation of use of a nightstick as a baton and property damage. The Board recommended charges and command discipline B, respectively, and the NYPD has not yet imposed discipline.
  - Case #202006197 involved a substantiated allegation of physical force. The Board recommended command discipline B and the NYPD has not yet imposed discipline.
  - Case #202100606 involved four substantiated allegations of pepper spray. The Board recommended charges and the NYPD has not yet imposed discipline. PO § 87(2)(g)
- PO Suarez has been a member of service for eight years and has been a subject in five CCRB complaints and fourteen allegations, of which three were substantiated (**BR16**):
  - Case #201806609 involved a substantiated allegation of a discourtesy. The Board recommended instruction and the NYPD imposed no penalty.
  - Case # 202001754 involved substantiated allegations of a strip search and a physical force. The Board recommended charges and the NYPD has not yet imposed discipline. § 87(2)(g)
- Sgt. Counihan has been a member of service for nine years and has been a subject in eight CCRB complaints and twenty-two allegations, of which two were substantiated (**BR17**):
  - Case # 202004301 involved two substantiated allegations of a nightstick used as a club and property damage. The Board recommended charges and the NYPD has not yet imposed discipline. § 87(2)(g)

**Mediation, Civil, and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On May 9<sup>th</sup>, 2022, a FOIL request was submitted to the office of the comptroller. Results will be attached upon receipt (**BR18**).
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

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Squad: 4

Investigator:	<u>Justin Huang</u>	<u>Investigator Huang</u>	<u>05/11/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u></u>
	05/31/2022	Signature	Print Title & Name
			Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date